

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,)
) File No. 20CR232 (13)
) (JRT/KMM)
Plaintiff,)
)
vs.) St. Paul, Minnesota
) November 13, 2020
Bryant Jarode Critten,) 10:00 A.M.
)
Defendant.)

BEFORE THE HONORABLE JUDGE PAUL A. MAGNUSON
UNITED STATES DISTRICT COURT
(CHANGE OF PLEA HEARING VIA VIDEO CONFERENCE)

APPEARANCES

For the Plaintiff: United States Attorney's Office
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For the Defendant: Caplan & Tamburnino
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Proceedings recorded by mechanical stenography;
transcript produced by computer.

10:00 A.M.

(In open court via video conference.)

THE COURT: Good morning, everyone. We have the matter of the United States versus Critten for a plea, and may we have the defendant sworn, please. I'll do it.

Mr. Critten, if you would raise your right hand, please.

THE DEFENDANT: Yes, sir.

(Defendant sworn.)

THE DEFENDANT: Yes, sir.

THE COURT: Okay. Thank you. You have to understand, Mr. Critten, that because you are under oath, testimony given today must be truthful, and lack of truth could result in serious charges of perjury or other things.

Now, at this point because we're dealing with what we anticipate to be a plea, I'm going to ask Mr. Jacobs to summarize the plea agreement for the record. You don't need to go into the factual basis at this point because we'll go into that later, but if you would summarize the plea agreement for the record and submit it to the Court, please.

MR. JACOBS: Thank you, Your Honor. I believe we tendered a signed copy of the plea agreement to the Court yesterday virtually, but I will go through the plea

1 agreement now.

2 The defendant agrees to plead guilty to Count 1
3 of the indictment which charges him with conspiracy to
4 commit mail fraud in violation of 18 U.S.C. 1341, 1349 and
5 2326. The defendant fully understands the nature and the
6 elements of these charges. I will come back to the factual
7 basis, Your Honor.

8 The plea agreement contains a waiver of pretrial
9 motions. The defendant understands and agrees that he has
10 the right to file pretrial motions, and he gives up those
11 rights pursuant to this plea agreement. The defendant
12 understands that he is waiving his constitutional trial
13 rights.

14 Defendant understands he has the right to go to
15 trial and he would be presumed innocent at trial. He would
16 have the right to a trial by jury and the right to
17 assistance of counsel. He gives up these rights pursuant
18 to this plea agreement, and he does so knowingly and
19 voluntarily.

20 Paragraph 5 of the plea agreement deals with
21 additional consequences. He understands that as a result
22 of the conviction, he could experience additional
23 consequences, including the loss of the right to carry a
24 firearm, the right to vote or the right to hold public
25 office.

1 Paragraph 6 of the plea agreement deals with the
2 statutory penalties pursuant to the charges of conspiracy
3 to commit mail fraud in violation of 18 U.S.C. 1341, 1349
4 and 2326.

5 There is a statutory maximum of 30 years in
6 prison, a supervised release term of not more than five
7 years, a maximum fine of \$250,000 or twice the gross gain
8 or loss caused by this offense, restitution as agreed to by
9 the parties, which I will discuss momentarily, and a
10 mandatory special assessment of \$100.

11 Paragraph 7 of the plea agreement deals with
12 guideline calculations. The base offense level in this
13 case is 7 pursuant to Guidelines Section 2B1.1A1. There
14 are several specific offense characteristics here.

15 The parties pursuant to the plea agreement agree
16 that the base offense level will be increased by 18 levels
17 because the loss amount in this case is greater than 3.5
18 million but less than 3.9 million. The parties also agree
19 that the base offense level should be increased by two
20 levels because the offense involved ten or more victims and
21 was committed through mass marketing.

22 The parties agree that no additional specific
23 offense characteristics apply. With respect to Chapter 3
24 adjustments, the parties agree that the offense level
25 should be increased by four levels because Mr. Critten knew

1 or should have known that the offense involved a large
2 number of vulnerable victims, and the parties agree that
3 the offense level should be increased by two levels because
4 the defendant was a manager or supervisor of the criminal
5 activity here.

6 The parties also agree that the government will
7 recommend that the defendant receive a two-level reduction
8 for acceptance of responsibility pursuant -- assuming that
9 he continues to abide by the conditions of the plea
10 agreement and his conditions of release.

11 The government also agrees that assuming he
12 continues to do those things, it will move for an
13 additional one level reduction at the time of sentencing.

14 Pursuant to the plea agreement, the parties
15 believe based on information known at this time that
16 Mr. Critten falls into a Criminal History Category of I.
17 That is just a stipulation -- that is just based on the
18 agreement.

19 That is not a stipulation but based on
20 information known to the parties at this time, and based on
21 the information that I have just discussed contained in the
22 plea agreement, the guideline range here based on the
23 adjusted offense level of 30 and a Criminal History
24 Category of I, the sentencing guideline range is 97 to 121
25 months imprisonment.

1 And there is a corresponding fine range based on
2 the adjusted offense level of \$30,000 to \$300,000.

3 Paragraph 8 -- paragraph 8 of the plea agreement deals with
4 revocation of supervised release. The defendant
5 understands that if he were to violate any condition of his
6 supervised release, he could be sentenced to an additional
7 term of imprisonment.

8 Paragraph 9 of the plea agreement discusses
9 discretion of the Court. The defendant understands that
10 the terms of the plea agreement are binding on himself and
11 the government only, that the plea agreement does not bind
12 the Court and that the sentencing guidelines are advisory
13 here and the Court will make its own determination as to
14 the applicable guideline ranges, as well as the sentencing
15 term.

16 Paragraph 10 deals with agreements for sentencing
17 recommendations. The defendant understands that both
18 parties are free to recommend whatever sentence they deem
19 appropriate. Either party can make a motion for departure
20 as to the applicable guideline range.

21 Paragraph 11 deals with the special assessment.
22 The defendant understands that he will be required to pay a
23 special assessment in the amount of \$100, and he agrees to
24 do so before the time of sentencing.

25 Paragraph 12 of the plea agreement deals with

1 restitution. The defendant understands and agrees that the
2 mandatory Victim Restitution Act applies in this case, and
3 he agrees to pay \$50,000 in restitution to all identified
4 victims in this and other related cases.

5 Paragraph 13 deals with disclosure of assets.
6 The defendant agrees to completely disclose to the U. S.
7 Attorney's Office the existence of any assets in advance of
8 his sentencing hearing.

9 Paragraph 14 of the plea agreement deals with
10 forfeiture. The defendant agrees to forfeit to the United
11 States any property which was derived or traceable to the
12 mail fraud conspiracy scheme charged in Count 1 of this
13 indictment.

14 Paragraph 15 of the plea agreement is a venue
15 waiver, Your Honor. In exchange for the consideration of
16 this plea agreement, the defendant waives all rights to
17 challenge venue in the state and District of Minnesota and
18 does so knowingly and voluntarily.

19 Paragraph 16 is a waiver of appeal and collateral
20 attack. The defendant pursuant to the plea agreement
21 waives the right to appeal any non-jurisdictional issues
22 relating to this case, and this appeal includes the
23 defendant's waiver of his right to appeal a guilt or
24 innocence sentence or restitution.

25 However, the parties do agree pursuant to the

1 plea agreement that this waiver of appeal does not apply to
2 an appeal of the substantive reasonableness of a term of
3 imprisonment greater than 121 months, which is the high end
4 of the guideline range, and the reciprocal waiver of the
5 government as to a term of imprisonment below 97 months,
6 which is the low end of the guideline range.

7 In addition, the plea agreement waives the right
8 to any collateral attack under 28 U.S.C. 2255. Chapter --
9 excuse me. Paragraph 17 of the plea agreement is a Freedom
10 of Information Act waiver. The defendant pursuant to this
11 plea agreement waives his right to obtain information
12 pursuant to the Freedom of Information Act.

13 Your Honor, and finally, paragraph 18 is a
14 complete agreement. The defendant pursuant to that
15 paragraph acknowledges that he has read the plea agreement,
16 that he has reviewed it with his counsel and that he
17 understands the plea agreement and that this agreement,
18 along with any additional agreements signed by the parties
19 before the entrance of this plea, is the entire agreement
20 and understanding between the defendant and the United
21 States of America.

22 THE COURT: Okay. Thank you very much.

23 Mr. Critten, it's my understanding that you have
24 in fact executed this plea agreement; is that correct?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And have you had opportunity to
2 review the plea agreement with your lawyer, Ms. Brisbois,
3 just literally paragraph by paragraph?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: You understand all the terms and
6 conditions of this plea agreement?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And have you voluntarily entered into
9 this plea agreement?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Now, you understand, Mr. Critten, if
12 you did not have the plea agreement and the matter went
13 through trial, et cetera, you could be facing an
14 imprisonment term of up to 30 years, to be followed by a
15 term of supervised release.

16 That supervised release means that you are
17 supervised under terms and conditions. If you violate
18 those terms and conditions, you could be put back in prison
19 for the length of term of that supervised release.

20 You're facing a fine of \$250,000 pursuant to the
21 statute, and because of the gross nature, another \$50,000
22 for a total fine of \$300,000.

23 The next one is a "will." You will be assessed a
24 \$100 special assessment, and can pay restitutions as agreed
25 to by the parties. Do you understand all of that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Now, aside from this plea agreement
3 itself, have there been any other promises made as to what
4 the Court would do at sentencing? In other words, are
5 there any side deals?

6 THE DEFENDANT: No, sir.

7 THE COURT: You understand that I need not accept
8 this plea unless I'm satisfied of two things. One, that
9 you fully understand your constitutional rights; and two,
10 that you're actually guilty of the offense charged.

11 Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you further understand that -- and
14 let's go over these constitutional rights first. First of
15 all, do you understand that you have a right to be
16 represented by a lawyer at every stage of the proceeding?
17 If you cannot afford a lawyer, a lawyer will be appointed
18 on your behalf.

19 Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you further understand you have a
22 right to plead not guilty, to persist in that plea of not
23 guilty and have your case go forward to trial?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you also understand that you have

1 a right to a speedy trial? It's a trial within 70 days of
2 the date of your indictment. Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you further understand that you
5 have a right to a trial by a jury of twelve persons. They
6 must unanimously agree that you're guilty before you can be
7 convicted. Do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you further understand that you
10 have the right to assistance of counsel at trial?
11 Ms. Brisbois could be with you at all times during a trial.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you also understand that at that
14 trial, you would have a right to cross-examine and confront
15 any witnesses called against you?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you further understand that you
18 are in fact presumed innocent until actually proven guilty?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you also understand the government
21 must prove its case against you beyond a reasonable doubt?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you further understand that at a
24 trial you would have a right to take the witness stand,
25 testify and tell your side of the story?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you also understand that you
3 cannot be compelled to incriminate yourself? You have an
4 absolute right to remain silent, and after you talked it
5 over with Ms. Brisbois, if you decided not to testify, that
6 Mr. Jacobs or whoever is prosecuting the case would be
7 prohibited from commenting to the jury about your failure
8 to testify.

9 Do you understand all of that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you further understand you have a
12 right to compulsory process or subpoena power to bring any
13 witnesses in on your own behalf?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Now, you understand, Mr. Critten,
16 that if this plea is accepted, there will not be a trial of
17 any kind. Do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you further understand that
20 pursuant to this plea agreement, there is severe
21 limitations on your right to appeal any aspect of this. Do
22 you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Now, there is one possibility I think
25 of appeal, and that is if I were to sentence above the

1 guidelines without a reason or if I were to make a mistake
2 in the guidelines or something of that nature, you would
3 have the right to appeal, but it's an extremely limited
4 right.

5 Do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Now, in addition to that, you
8 understand that if you were to take such an appeal, you
9 have to do so within 14 days of the date of your
10 sentencing. Do you understand that, or give notice of that
11 within 14 days of the date of your sentencing.

12 Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Now, we've gone over a whole series
15 of rights. Do you have any questions about any of them?

16 THE DEFENDANT: No, sir.

17 THE COURT: Do you understand these rights?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And you voluntarily waive these
20 rights?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Now, again, has there been any force
23 or threats or promises made apart from the plea agreement
24 itself?

25 THE DEFENDANT: No, sir.

1 THE COURT: Have you had any drugs or alcohol in
2 the last 24 hours?

3 THE DEFENDANT: No, sir.

4 THE COURT: Have you had sufficient time to
5 confer with your lawyer, Ms. Brisbois?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And has she done a good job on your
8 behalf? Are you satisfied with her representation?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Now, there is one other factor that I
11 should mention, I think, Mr. Critten, for you to understand
12 that this case is assigned to Chief Judge Tunheim, and I'm
13 just kind of filling in for him and taking some pleas,
14 et cetera.

15 There have been no arrangements made as to who
16 the sentencing judge would be. The case remains assigned
17 to Judge Tunheim, so it may be that I would pass sentence
18 on your case. It may be that Judge Tunheim would pass on
19 the sentence on your case.

20 In either event, both of us have Article III
21 status and are entitled to do that, to pass that sentence.
22 Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Now, I think we're now at the point
25 that we can look to the mail fraud count. How do you

1 plead, guilty or not guilty?

2 THE DEFENDANT: Guilty.

3 THE COURT: Okay. And, Mr. Jacobs, would you be
4 kind enough to inquire as to the facts of the case, please?

5 MR. JACOBS: Certainly, Your Honor. Thank you.

6 Good morning, Mr. Critten.

7 THE DEFENDANT: Good morning.

8 MR. JACOBS: If at any point you can't hear me or
9 you need me to repeat a question, please let me know, and
10 I'm happy to do so. Mr. Critten, from in or about at least
11 August of 2013 through in or about February of 2020, were
12 you employed at a company called Leisure Time Resources?

13 THE DEFENDANT: Yes, sir.

14 MR. JACOBS: If I refer to that company as LTR,
15 will you understand what I'm talking about?

16 THE DEFENDANT: Yes, sir.

17 MR. JACOBS: In the state and District of
18 Minnesota during that time period, did you knowingly
19 conspire with others to devise a scheme and artifice to
20 defraud and to obtain money by materially false and
21 fraudulent pretenses?

22 THE DEFENDANT: Yes, sir.

23 MR. JACOBS: Was that scheme to defraud in
24 connection with telemarketing?

25 THE DEFENDANT: Yes, sir.

1 MR. JACOBS: Did that scheme to defraud victimize
2 10 or more people over the age of 55?

3 THE DEFENDANT: Yes, sir.

4 MR. JACOBS: For the purpose of executing that
5 scheme, was there cause to be the sending, delivery or
6 receipt of mail through the United States Postal Service?

7 THE DEFENDANT: Yes, sir.

8 MR. JACOBS: Now I'll talk a little bit more
9 specifically about the fraud here. Did you participate in
10 the telemarketing fraud scheme involving magazine
11 subscription sales?

12 THE DEFENDANT: Yes, sir.

13 MR. JACOBS: Did you work as a telemarketing for
14 LTR?

15 THE DEFENDANT: Yes, sir.

16 MR. JACOBS: Is LTR a Florida based company
17 involved in fraudulent magazine sales?

18 THE DEFENDANT: Yes, sir.

19 MR. JACOBS: Is LTR owned and operated by
20 codefendants Anthony Moulder and John Blalock?

21 THE DEFENDANT: Yes, sir.

22 MR. JACOBS: Did LTR operate and did you work at
23 a telemarketing call center in Cape Coral, Florida?

24 THE DEFENDANT: Yes, sir.

25 MR. JACOBS: In committing this scheme to

1 defraud, would you and others at the company use fraudulent
2 sales scripts to defraud victims?

3 THE DEFENDANT: Yes, sir.

4 MR. JACOBS: Were many of those victims elderly
5 or otherwise vulnerable?

6 THE DEFENDANT: Yes, sir.

7 MR. JACOBS: Were the fraudulent sales scripts
8 designed to induce victims to make large or repeat payments
9 to LTR and other companies?

10 THE DEFENDANT: Yes, sir.

11 MR. JACOBS: Would the company obtain lists of
12 consumers who had active magazine subscriptions through
13 other companies?

14 THE DEFENDANT: Yes, sir.

15 MR. JACOBS: Were these referred to sometimes as
16 lead lists?

17 THE DEFENDANT: Yes, sir.

18 MR. JACOBS: Would you and other telemarketers at
19 that company then call individuals on those lead lists?

20 THE DEFENDANT: Yes, sir.

21 MR. JACOBS: And would you use the fraudulent
22 sales scripts that we had just discussed?

23 THE DEFENDANT: Yes, sir.

24 MR. JACOBS: And would you make a series of
25 knowing lies and misrepresentations to sign them up for a

1 new magazine subscription?

2 THE DEFENDANT: Yes, sir.

3 MR. JACOBS: Would you and others at the company
4 claim that you were calling from the victim consumer's
5 existing magazine company?

6 THE DEFENDANT: Yes, sir.

7 MR. JACOBS: But was that true?

8 THE DEFENDANT: No, sir.

9 MR. JACOBS: Would you and other telemarketers at
10 the company claim that the victim's account was set to
11 renew for a 60-month term at midnight?

12 THE DEFENDANT: Yes, sir.

13 MR. JACOBS: Was that true?

14 THE DEFENDANT: No, sir.

15 MR. JACOBS: Would you and other telemarketers
16 offer to take this so-called automatic renewal off the
17 account?

18 THE DEFENDANT: Yes, sir.

19 MR. JACOBS: Would you claim or offer to reduce
20 the victim consumer's monthly magazine payment?

21 THE DEFENDANT: Yes, sir.

22 MR. JACOBS: But in reality, did LTR have any
23 existing relationship typically with these victim
24 consumers?

25 THE DEFENDANT: No, sir.

1 MR. JACOBS: Instead did you or other
2 telemarketers call to trick them into unwittingly signing
3 up for a new magazine subscription?

4 THE DEFENDANT: Yes, sir.

5 MR. JACOBS: In the course of this ongoing
6 scheme, did telemarketers from LTR and the owners of LTR
7 defraud thousands of victims?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Were at least 10 of those victims
10 over the age of 55?

11 THE DEFENDANT: Yes, sir.

12 MR. JACOBS: In between August 2013 and February
13 2020, did LTR collect approximately \$9,465,000 from victims
14 as a result of this fraudulent scheme?

15 THE DEFENDANT: Yes, sir.

16 MR. JACOBS: Mr. Critten, are you pleading guilty
17 today knowingly and voluntarily?

18 THE DEFENDANT: Yes, sir.

19 MR. JACOBS: Are you pleading guilty today
20 because you are in fact guilty of the charges in the
21 indictment?

22 THE DEFENDANT: Yes, sir.

23 MR. JACOBS: Thank you, Mr. Critten.

24 Your Honor, I have nothing further on the factual
25 basis.

1 THE COURT: Okay. Excuse me. Okay. Thank you
2 very much.

3 Mr. Critten, based upon the testimony presented
4 in the matter, the Court does find that you are actually
5 guilty of the offense charged in this matter. I do at this
6 time order a presentence investigation report, ask that the
7 probation service prepare that report, submit it to the
8 Court.

9 I have to tell you, Mr. Critten, because of the
10 large number of defendants that, codefendants in this
11 matter, it may be some time until sentencing in fact will
12 be executed.

13 I just can't give you any assurances about that
14 one way or another because quite honestly, I have not
15 talked to the probation department about how they wish to
16 proceed in it, and I have not talked to Judge Tunheim about
17 how he wishes to proceed.

18 So I'm just going to leave any sentencing date
19 open, and subject to your being advised, suggest that you
20 remain on bond according to current terms and conditions
21 pending sentencing in the matter, but I do have to let you
22 know that once sentencing has been determined, it's
23 extremely important that you appear at that sentencing.

24 Failure to appear can result in another very
25 serious crime and in addition to the matter before us, and

1 therefore you need to be sure that you do appear.

2 Are there any other matters to come to our
3 attention at this time?

4 MR. JACOBS: None from the government, Your
5 Honor.

6 MS. BRISBOIS: No, Your Honor.

7 THE COURT: Ms. Brisbois?

8 MS. BRISBOIS: No, Your Honor.

9 THE COURT: Okay. We thank you very much. We
10 will in any event stand in recess at this time.

11 Ms. Brisbois, I think this is the first time I
12 have had the privilege of having you in the court. You
13 happen to share a surname with a very fine jurist in
14 Duluth.

15 Is there any relationship?

16 MS. BRISBOIS: There is not.

17 THE COURT: It would be worthwhile.

18 MS. BRISBOIS: Yeah.

19 THE COURT: Very good. Thank you very much. I
20 just honestly did not know.

21 Say hi to Mr. Tamburnino.

22 MS. BRISBOIS: I will.

23 THE COURT: And thank all of you for being with
24 us today.

25 MS. BRISBOIS: Thank you, Your Honor.

1 THE COURT: We are in recess.

2 MR. JACOBS: Thank you, Your Honor.

3 MS. BRISBOIS: Thank you, Your Honor.

4 **(Court was adjourned.)**

5 * * *

6 I, Kristine Mousseau, certify that the foregoing
7 is a correct transcript from the record of proceedings in
8 the above-entitled matter.

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12 Certified by: s/ Kristine Mousseau, CRR-RPR
13 Kristine Mousseau, CRR-RPR

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